

IN CIRCUIT COURT OF WETZEL COUNTY WEST VIRGINIA

MARKWEST LIBERTY MIDSTREAM)
& RESOURCES, L.L.C.,)

Plaintiff,)

v.)

J. F. ALLEN COMPANY; AMEC)
FOSTER WHEELER ENVIRONMENT)
& INFRASTRUCTURE, INC.;)
REDSTONE INTERNATIONAL INC.;)
CIVIL & ENVIRONMENTAL)
CONSULTANTS, INC.; and)
COASTAL DRILLING EAST, LLC.)

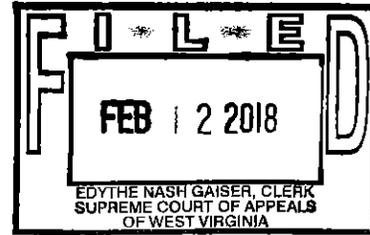
Defendants,)

v.)

THE LANE CONSTRUCTION)
CORPORATION,)

Additional Defendant.)

Case No. 16-C-82
Judge Cramer



**PLAINTIFF MARKWEST LIBERTY MIDSTREAM & RESOURCES,
L.L.C.'S REPLY TO THE *SUA SPONTE* JUDICIAL
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Plaintiff MarkWest Liberty Midstream & Resources, LLC ("MarkWest"), pursuant to West Virginia Trial Court Rule 29.06(a)(4), submits this Reply to the Circuit Court of Wetzel County's *Sua Sponte* Judicial Motion to Refer Case to the Business Court Division (the "Motion"). MarkWest takes no position on the Motion. However, MarkWest (1) does request that no matter who this Court refers the case (back to Wetzel County or to the Business Court Division) that it orders an expedited schedule so that MarkWest can quickly take this matter to trial; and (2) objects to any notion that this matter could be consolidated, or even has anything to do with, the *Westcon* matter.

I. **MarkWest Has Been Prejudiced by the Motion Because It Lost Its Upcoming Trial Date and, Therefore, Requests an Expedited Case Schedule.**

Nearly a year and a half ago, MarkWest commenced this action to recover the nearly \$30 million in damages it sustained as a result of defendant's defective design and construction of a 100-foot tall, 1250-foot long retaining wall (the "Retaining Wall") at MarkWest's Mobley natural gas processing plant in Wetzel County, West Virginia (the "Mobley Site").

None of the parties wanted this case sent to the Business Court Division. Instead, on May 5, 2017, the Circuit Court entered a Scheduling Conference Order negotiated by the parties that, among other things, ordered discovery to be completed by **April 2, 2018** and set the case as first chair for trial on **July 11, 2018**. The parties engaged in substantial discovery efforts, including exchanging numerous sets of written discovery, producing hundreds of thousands of documents, and serving fact and expert witness disclosures. On February 2, 2018, only two (2) months before the close of discovery, the Circuit Court *sua sponte* filed the Motion.

This Motion severely prejudices MarkWest, a company with significant business operations in West Virginia, because it deprives MarkWest of its upcoming trial which would have allowed it the immediate opportunity to be compensated for the tens of millions of dollars in damages it has endured. Accordingly, whether or not this Court sends the case back to Wetzel County or refers the matter to the Business Court Division, MarkWest requests an expedited referral and an expedited discovery and trial schedule so MarkWest can have its day in court as soon as possible.

II. This Case Could Never Be Consolidated with the *Westcon* Matter.

MarkWest disagrees with the Circuit Court's statement in the Motion that this case "could be the subject of consolidation" with *MarkWest Liberty Midstream, L.L.C. v. Bilfinger Westcon Inc.*, Civil Action No. 16-C-66 (Circuit Court of West Virginia, Wetzel County) ("*Westcon*") because this case and *Westcon* have absolutely nothing to do with each other.

Consolidation may only be granted when two or more cases involve a common question of law or fact and/or arise out of the same transaction or occurrence. W. Va. R. Civ. P. 42. A cursory review of the Complaint in this case and the *Westcon* case demonstrates that they do not involve common questions of law or fact or arise out of the same transaction or occurrence, do not involve the same parties (other than MarkWest) and, therefore, cannot be consolidated.

Specifically, in this case, MarkWest seeks nearly \$30 million in damages against five defendants (J.F. Allen Company, Amec Foster Wheeler Environment & Infrastructure, Inc., Redstone International Inc., Civil & Environmental Consultants, Inc., and Coastal Drilling East, LLC) as a result of the defective design and construction of the Retaining Wall at the Mobley Site. In *Westcon*, MarkWest seeks nearly \$7 million in compensatory damages plus punitive damages against one defendant (*Westcon*) as a result of the defective construction of the Mobley V Gas Processing Plant ("Mobley V") at the Mobley Site and fraud committed by *Westcon*.

Again, simply stated, this case and *Westcon* have absolutely nothing to do with each other. If this case and *Westcon* are both sent to the Business Court Division or both sent to Wetzel County, the cases should not be consolidated and could be assigned to different judges.

Dated: February 9, 2018

K&L GATES LLP

1st Jason L. Richey

Jason L. Richey (admitted *Pro Hac Vice*)

jason.richey@klgates.com

Richard F. Paciaroni (admitted *Pro Hac Vice*)

richard.paciaroni@klgates.com

Thomas C. Ryan (WVSB #9883)

thomas.ryan@klgates.com

Katherine M. Gafner (WVSB #11901)

katherine.gafner@klgates.com

Travis L. Brannon (WVSB #12504)

travis.brannon@klgates.com

K&L Gates LLP

K&L Gates Center

210 Sixth Avenue

Pittsburgh, PA 15222

Tel: (412) 355-6500

Fax: (412) 355-6501

William Crichton VI (WVSB #9049)

will@crichtonlawfirm.com

Crichton & Crichton

325 9th St.

Parkersburg, West Virginia 26101

Tel: 304.485.5003

Fax: 304.485.5073

*Counsel for MarkWest Liberty Midstream &
Resources, L.L.C.*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2018, a true and correct copy of the foregoing **MARKWEST LIBERTY MIDSTREAM & RESOURCES, L.L.C.'S** **REPLY TO THE *SUA SPONTE* JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION** was served via electronic mail and U.S. Mail, postage pre-paid, on the following counsel of record:

Douglas C. LaSota, Esquire
Grant H. Hackley, Esquire
Marshall Dennehey Warner Coleman & Goggin
501 Grant Street, Suite 700
Pittsburgh, PA 15219
Fax: 412-803-1188
Email: DCLasota@mdwgc.com
(Attorneys for Defendant J.F. Allen Company)

Stephen F. Gandee, Esquire
Robinson & McElwee
PO Box 128
140 West Main Street, Suite 300
Clarksburg, WV 26302-0128
Fax: 304-622-5065
Email: sfg@ramlaw.com
(Attorney for Defendant Coastal Drilling East, LLC)

David L. Wyant, Esquire
Bailey & Wyant PLLC
1219 Chapline Street
Wheeling, WV 26003
Fax: 304-233-0201
(Attorney for Defendant J.F. Allen Company)

Vic L. McConnell, Esquire
Jamie F. Little, Esquire
Smith Cashion & Orr, PLC
231 Third Avenue North
Nashville, TN 37201
Fax: 615-742-8556
(Attorneys for Defendant AMEC Foster Wheeler Environment & Infrastructure)

Donald J. Tennant, Jr., Esquire
Tennant Law Offices
38 Fifteenth Street, Suite 100
Wheeling, WV 26003
*(Attorney for Defendant AMEC Foster Wheeler
Environment & Infrastructure, Inc.)*

Bruce E. Stanley, Esquire
Alicia Schmitt, Esquire
Stanley & Schmitt PC
2424 Craftmont Avenue
Pittsburgh, PA 15205
Fax: 412-265-6015
(Attorneys for Defendant Redstone International Inc.)

Michael A. Jacks, Esquire
Jacks Legal Group, PLLC
United Federal Credit Union Building
3467 University Avenue, Suite 200
Morgantown, WV 26505
Fax: 304-278-3187
(Attorney for Defendant Redstone International Inc.)

Ross A. Giorgianni, Esquire
K. Bradley Mellor, Esquire
Damon R. Thomas, Esquire
Blumling & Gusky, LLP
436 Seventh Avenue
1200 Koppers Building
Pittsburgh, PA 15219
Fax: 412-227-2050
*(Attorneys for Defendant Civil & Environmental
Consultants, Inc.)*

W. Gus Saines, Esquire
McDermott & Bonenberger, PLLC
53 Washington Avenue
Wheeling, WV 26003
*(Attorney for Defendant Civil & Environmental
Consultants, Inc.)*

Traci L. Wiley, Esquire (WVSB # 8080)
MacCorkle Lavendar PLLC
300 Summers Street, Suite 800
Post Office Box 3283
Charleston, WV 25332-3283
Fax: (304) 344-8141
(Attorney for The Lane Construction Corporation)

1st Jason L. Richey
Jason L. Richey